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SUMMARY RECORD OF THE 1930th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 10 July 2001, at 3 p.m.

Chairperson: Mr. BHAGWATI

later: Mr. KRETZMER
(Vice-Chairperson)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 5) (continued)

Third periodic report of the Netherlands (continued) (CCPR/C/NET/99/3; CCPR/C/NET/99/3/Add.1; CCPR/C/72/L/NET; HRI/CORE/1/Add.67 and 68)

1. At the invitation of the Chairperson, the members of the delegation of the Netherlands resumed their places at the Committee table.

2. The CHAIRPERSON invited the members of the Committee to raise questions regarding the implementation of the Covenant in Aruba.

3. Mr. SOLARI YRIGOYEN, referring to paragraph 450 of the report (CCPR/C/NET/99/3), noted that distinctions based on a number of the grounds mentioned in article 2 of the Covenant concerning non-discrimination still existed in Aruba. The Aruban Government apparently considered it not only desirable but essential that a number of matters should be subject to certain restrictions. He asked the delegation to specify the circumstances in which it was felt that restrictions should be maintained. Were there any areas in which action was being taken to eliminate such restrictions?

4. Paragraph 451 of the report cited a Country Ordinance on admittance and deportation, under which the "legitimate family" of an Aruban male only was entitled to admittance to Aruba. What was the status of the new Ordinance designed to revise the admittance system and to abolish the discriminatory provision? Had it already entered into force and had the discriminatory distinction been abolished?

5. According to paragraph 457, a maximum admittance quota was applicable to nationals of the Dominican Republic and Haiti "living in Aruba". He asked whether the quota was applicable to new residents from the two countries concerned or to residents in excess of the quota whose permits would then be withdrawn.

6. Referring to paragraph 466, he asked whether it was planned to draft a country ordinance specifying further measures to be taken in a state of emergency, as authorized by article V.29 of the Aruban Constitution. If so, care should be taken to ensure that it complied with the provisions of article 4 of the Covenant.

7. Mr. KLEIN, referring to question 25 of the list of issues, said that the Committee had received information concerning the vulnerability of domestic workers in Aruba, to whom the Labour Ordinance was not applicable. According to the delegation, the Labour Department verified whether labour contracts complied with the statutory minimum rules concerning payment, working hours and holidays, and workers could sue employers who failed to comply with those rules for breach of contract. He would welcome additional information about the verification procedure. Had any workers sued their employers to date?

8. Mr. ANDO, referring to paragraph 525 of the report and question 25 of the list of issues, asked why domestic workers were not allowed to change employers during their first 10 years of employment. According to paragraph 526, the Aruban Government intended to draw up new regulations which would considerably reduce that period. He requested further details of the proposed new regulations and asked whether, under the existing regulations, domestic servants were free to return to their country of origin during the 10-year period.

9. According to paragraph 599 (a) of the report, victims could join in criminal proceedings under certain circumstances with a view to obtaining compensation. He was troubled by the fact that the victim's right to sue was subject to the discretion of the courts, a situation that might lead to abuse. He would appreciate additional information about how the relevant article of the new Code of Criminal Procedure was applied in practice.

10. The CHAIRPERSON invited the delegation to introduce the part of the report relating to the Netherlands Antilles.

11. Mr. van der KWAST (Netherlands), reading out a message from the authorities of the Netherlands Antilles, said that the recent major restructuring of public finances had been accompanied by a reordering of both the structure of government and the focus of public policy. The accumulation of budget deficits over the years had brought the Netherlands Antilles to the brink of financial collapse. Under the structural adjustment programme that was being implemented in collaboration with the International Monetary Fund (IMF) and the Netherlands Government, the scope of federal public policy was strictly circumscribed and tasks that fell outside the scope of policy formulation and legislation were to be carried out at the local level.

12. The economic recession had led to high unemployment. Poverty, drug abuse and drugs-related crime were closely interrelated. The brain drain, especially from Curaçao to the Netherlands, was a growing concern and the Netherlands was also confronted with an inflow of drop-outs from the education system of the Netherlands Antilles. There were now some faint signs of an economic recovery and the administration continued to pursue an aggressive economic policy designed to attract foreign investment, thereby boosting employment and foreign exchange earnings.

13. The recognition by the Netherlands of the right to self-determination of each of the island territories composing the Netherlands Antilles in the late 1970s had proved unsettling. A vote to leave the Antilles had been interpreted by the Netherlands at the time as a vote for independence. In the early 1990s, however, the attitude of the Netherlands had changed and the islands of the Antilles had been given the opportunity to seek a position similar to that of Aruba, which had gained separate status in 1986. In a referendum held in 1994, a vast majority of the population of Curaçao had voted to remain part of the Antilles within the Kingdom and the four remaining islands had subsequently followed suit. In 2000, however, St. Maarten had sought separate status and Curaçao had set up an Advisory Committee to examine the possibility of a new constitutional order for the island. The composition and status of the Netherlands Antilles would therefore continue to be in doubt in the years ahead.

14. Policy makers and experts had recently focused on the need for integrated responses to the country's problems. Policies adopted in response to one issue could undermine those

adopted in response to another. However, a considerable effort was being made to implement all provisions of the Covenant. Based on the case law of the European Court of Human Rights in the Mahien-Mohin and Clerfeyt case, the Electoral Law had been amended to allow inmates of prisons and correctional institutions to exercise their right to vote and to legalize the use of electronic voting devices.

15. Pursuant to an amendment of the Ordinance on Admission and Expulsion, nationals of the European part of the Kingdom no longer required a work permit for the Netherlands Antilles.

16. When the Ordinance on the Administration of Justice entered into force in September 2001, citizens would be able to appeal against wrongful acts by the Antilleis administration or Government. The Department of Justice, in cooperation with other governmental agencies and non-governmental organizations (NGOs), planned to promote public awareness of the Ordinance through workshops and information campaigns.

17. Acts of torture and other forms of cruel, inhuman or degrading treatment were penalized under new legislation, and the Criminal Code and the Ordinance on the Prison System had been brought into conformity with relevant international and regional instruments. The New Civil Code (especially the family law provisions), the Ordinance on Salaries and Income Tax, the Ordinance on Free Legal Aid, the Ordinance on Old Age Pensions and Widows' and Orphans' Insurance and the National Health Insurance and Employer's Liability Act were now fully consistent with article 2 of the Covenant.

18. There had been an overall improvement in conditions of detention and prison administration in Curaçao. Operational changes in the new prison facility were expected to provide better conditions for both inmates and personnel.

19. The CHAIRPERSON invited the delegation to reply to questions 15 to 20 of the list of issues relating to the New Civil Code and its impact on the promotion of equality between men and women, the factual and legal equality of women and men; revision of the Criminal Code, particularly with respect to the death penalty; the functioning of the Police Complaints Committees; cooperation between the Netherlands Antilles and the Netherlands concerning the reorganization of the prison system and conditions in Koraal Specht prison and in police stations in St. Maarten and Bonaire; and the investigation of allegations of ill-treatment in detention facilities.

20. Mr. van der KWAST (Netherlands) said that the Government of the Netherlands Antilles regretted the fact that it was not in a position to supply full and detailed answers to all the questions raised by the Committee. It hoped to reply more extensively in the near future.

21. With regard to questions 15 and 16, the New Civil Code for the Netherlands Antilles (NBWNA) had entered into force on 1 January 2001. It eliminated a number of provisions that had discriminated against women, namely article 154, paragraph 2, regarding the husband's prerogative to decide where a couple were to live in cases of disagreement (under the new Code, such decisions would be made by court order); article 339 under which the father's will had prevailed in the event of a difference of opinion concerning parental responsibility (under the new Code, disputes could be brought before a court); article 75 which required the wife to adopt

her husband's status; article 156, paragraph 2, concerning the husband's obligation to provide housekeeping money (under the new Code, the husband and wife would bear equal responsibility); article 69 which had required children to adopt their father's place of residence (under the new Code, children could adopt the place of residence of the parent with whom they resided or had most recently resided); article 261 concerning the wife leaving her husband's home during divorce proceedings; article 262 requiring the husband to pay maintenance to his wife; article 340 which had authorized the father to administer a child's assets and represent the child in civil matters (under the new Code, such responsibility could be assumed by either parent or both); article 373, paragraph 2, and article 405, paragraph 2, concerning the point in time at which a mother who had been appointed guardian or second guardian assumed that legal role; article 416, paragraph 2, concerning the impossibility of disqualifying from guardianship a married woman who had been appointed guardian; article 418, paragraph 2, allowing an unmarried women, upon marriage, to renounce the duties of guardianship; and article 78 which had set the minimum age of marriage at 18 for men and 15 for women (under the new Act, the minimum age was 18 for both sexes). Under the Country Ordinance of 23 December 1997, which had entered into force on 1 January 1998, the earned income of spouses was no longer taxed jointly.

22. There was no Equal Opportunities Act but the prohibition of discrimination in article 26 of the Covenant was directly applicable in the Netherlands Antilles. The courts could declare any regulation that was incompatible with article 26 to be non-binding. Individuals who believed they were victims of unequal treatment could have recourse to the courts under article 43 of the Charter for the Kingdom of the Netherlands. Under the Criminal Code, particularly article 95 (c), discrimination on grounds of race, religion or conviction was a criminal offence.

23. The Convention on the Elimination of All Forms of Discrimination against Women had entered into force for the Netherlands Antilles in 1991 and there were plans to ratify the Optional Protocol to the Convention.

24. With regard to question 17, the Criminal Code was still being reviewed by a Committee appointed for the purpose and a new Criminal Code would be adopted in due course. The delay was mainly due to the shortage of legal draftsmen. The Sixth Protocol to the European Convention on Human Rights on the abolition of the death penalty had entered into force for the Netherlands Antilles on 1 May 1986.

25. With regard to question 18, a Police Conduct Complaints Committee (KPO) had been set up by the Country Ordinance of 28 January 1994. The KPO was required to investigate all complaints submitted by members of the general public. The Antillean Police Service, the police officer concerned and the complainant were given an opportunity to clarify their position orally or in writing. The parties were informed of the KPO's provisional findings before it issued its final report, which was also forwarded to the Minister of Justice. The Minister was not obliged to follow the KPO's recommendations. A total of 96 complaints had been submitted by May 2001, including 60 concerning Curaçao, 11 concerning St. Maarten and 24 concerning Bonaire. One half of the total had been dealt with. They concerned issues such as improper police conduct, failure to deal properly with complaints and, in a few cases, ill-treatment by the police. In some cases, the KPO had been deemed to lack competence to address the complaint.

Other complaints had been declared unfounded. In all other cases, the KPO had submitted reports to the Minister of Justice, recommending, inter alia, that police officers should be instructed to comply strictly with police regulations. The KPO itself was not empowered to impose sanctions on police officers or persons of equivalent status.

26. With regard to question 19, the cooperation agreement between the Netherlands and the Netherlands Antilles concerning the reorganization of the prison system covered such issues as overcrowding and poor sanitary conditions in prisons. In the light of proposals submitted by a working group for enlarging the capacity of Curaçao prison and improving conditions there, a Covenant had been concluded between the Netherlands and the Netherlands Antilles concerning the Antillean prison system, particularly Koraal Specht prison, in March 1998. Over the following year, prison experts had provided substantial support in the areas of finance, human resources, security, construction, reorganization and operational parameters. Under the Covenant, the Government of the Netherlands Antilles had undertaken to appoint an interim Antillean management team and to draw up a timetable for dealing effectively with construction issues, technical matters, staffing and deployment, improvement of existing legislation and the organizational structure, prison procedures, appointment of accommodation coordinators, contingency plans for emergencies, an inmate complaint office, inmate intake, classification procedures and institutional services, regulations regarding the use of force, cell check groups, activities for inmates, a Complaints Committee with which inmates could lodge appeals against management sanctions, staff training, investigation of staff corruption and obtaining union support for new policies.

27. The above-mentioned improvements applied to Koraal Specht prison on the island of Curaçao. Another prison on the island of Bonaire had been closed in 2000 and its inmates transferred to Koraal Specht: the building was now used as a remand centre. A new management team had been appointed to Point Blanche prison on the island of St. Maarten in October 2000.

28. In November 1999, the Government had concluded a construction and renovation agreement for Koraal Specht prison with a United States company, Wackenhut Corrections Corporation. The project was due for completion in October 2001. The construction of two new housing blocks, with a total of 288 beds, had helped to relieve overcrowding. A kitchen, computerized central control facility and forensic unit were already complete, and a vocational building would be ready shortly. The new prison would have five separate wings to house different categories of offender.

29. Following the conclusion of a second agreement with the Wackenhut Corrections Corporation, an "interim secondment team" of 19 prison experts had taken over the management of Koraal Specht prison in October 2000. Structural operational changes had been introduced to improve management and operational procedures: however, the changes had encountered fierce resistance from local staff. Staff had refused to work on several occasions, which had allowed three mass escapes of inmates to take place in the space of six weeks in March-April 2001. Following a Government investigation into staff conduct in March 2001, two prison officers had been arrested and 14 others transferred to other parts of the prison service. Staff shortages continued to compromise the prison's security, and staff training courses had had to be cancelled. The prison had been renamed "Bon Futuro" in April 2001.

30. A training programme with educational, vocational and counselling elements would be offered to inmates when the necessary staff had been appointed. Training and education services had been contracted out to a respected local educational institution, and were expected to be available from August 2001. Eventually, it was hoped that up to 12 hours of activities per week would be made available to each inmate.

31. Replying to question 20, he said that a 13-member supervisory board had been set up in 1999 to investigate prisoners' allegations of ill-treatment in detention facilities. The chairman was a judge and the other members were: four lawyers, two physicians, a public prosecutor, a businessman, a hospital manager, a court secretary, a sociologist and a former union president.

32. The supervisory board held monthly meetings with the prison governor and prisoners' grievance officer. It had access to all prison documents and reports and was authorized to visit any part of the prison at any time. Two teams of special commissioners were appointed every month, who made a two-hour inspection of the prison every week. During those inspections, inmates had the right to present any complaints without a prison officer being present, except in cases where the prison governor considered it necessary to ensure the commissioners' safety. The commissioners' reports were submitted to the governor and to the supervisory board.

33. If an inmate's complaint related to a punishment or solitary confinement imposed by decision of the prison governor, or a refusal of a request to be placed in solitary confinement, it was referred to a complaints committee made up of members of the supervisory board. Both the inmate concerned and the governor were heard by the complaints committee. Its ruling, which must be issued within two weeks, was not subject to appeal. If the prisoner's complaint was declared well-founded, the prison governor's decision would be revoked.

34. Mr. SOLARI YRIGOYEN thanked the Netherlands delegation for its clear replies to the Committee's questions. He appreciated that it was difficult for representatives from the Netherlands Antilles and Aruba to attend the session.

35. There were clearly more issues for concern in the Netherlands Antilles than there were in the European territory of the Netherlands. The State Party's report had clarified certain instances of apparent non-compliance with the Covenant, including cases of torture, abuses by police officers and discrimination, especially against women. However, the provisions of the Covenant were still not fully guaranteed. For example, the third periodic report (CCPR/C/NET/99/3, para. 235) stated that a "state of war" or "martial law" might be declared in circumstances which included "the likely disruption of internal order and peace", which seemed an excessively drastic response. No such state of war or martial law had ever been declared, but the power to do so posed a potential threat to civil liberties.

36. He was puzzled by the delegation's statement that certain restrictions on the freedom of expression were necessary. He wondered if the delegation perhaps meant restrictions intended to prevent propaganda intended to incite racial hatred or encourage violations of the rights enshrined in the Covenant. If so, he could reassure the delegation that such restrictions were not an infringement of the right to freedom of expression.

37. He appreciated that the Criminal Code of the Netherlands Antilles was still undergoing revision and that it was therefore difficult for the delegation to answer the Committee's questions about the abolition of the death penalty. However, could the delegation say whether the revision of the Criminal Code would definitely lead to the abolition of the death penalty, or would certain crimes committed in time of war still be capital offences? When would the revision of the Criminal Code be complete?

38. In its oral statement, the delegation had reassured the Committee that torture was not a problem in the Netherlands Antilles. The Kingdom of the Netherlands had acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Criminal Code was currently undergoing revision. Was torture a crime under any other national laws? He would welcome the provision of statistics concerning cases of torture or other cruel, inhuman or degrading treatment or punishment. While the establishment of the Police Conduct Complaints Committee (KPO) to investigate violence by police officers was a welcome development, the Committee should be provided with statistics on the numbers of such incidents, the number of cases brought before the independent commission, the action taken and the number of police officers who had been convicted.

39. Paragraph 261 of the third periodic report dealing with article 8 of the Covenant (prohibition of slavery) referred to the possibility of a term of imprisonment for a member of a ship's crew for evasion of his her duties amounting to desertion. The connection with slavery was not clear to him, and he would welcome an explanation.

40. Paragraph 266 of the report stated that a suspect could be detained in police custody for four days, with a possible extension to 10 days. Who determined the length of preventive detention - a police officer or a member of the judiciary? He would welcome more information on that point.

41. He was glad to hear that the Civil Code, which had caused problems in relations between men and women and in private life generally, had been amended. However, he was concerned to read about a law dating from 1933 which seemed to start from the premise that public meetings were prohibited unless they had been expressly authorized by the local police chief (para. 332). Was that really the case?

42. Paragraph 340 of the report stated that illegitimate children who had not been acknowledged by their fathers still did not enjoy the same rights as legitimate children because of the difficulty of proving paternity. Surely that argument was no longer valid now that paternity could be proved by means of DNA testing.

43. He asked for more information about the rights of minority population groups in the Netherlands Antilles. Which minorities were represented, and what was their status compared with that of the majority group? Did their situation vary from one island of the Netherlands Antilles to another?

44. Sir Nigel RODLEY said that he did not feel that the Netherlands delegation had the information required to conduct an effective dialogue with the Committee. Nevertheless, he wished to ask a number of questions. He would welcome more details of the cooperation

agreement between the Netherlands and the Netherlands Antilles relating to the Antillean prison system. How much of the work of the prison system was to be entrusted to private companies? Who were the members of the interim secondment team appointed in October 2000? The Government was ultimately responsible for the welfare of prison inmates: how did it control the activities of the private companies? To what extent had the improvements at Koraal Specht prison relieved overcrowding there? How many inmates did the prisons currently hold, compared with the number they were designed to hold?

45. Did the prisons supervisory board appointed in 1999 to investigate prisoners' grievances issue a public report and, if so, could a copy be submitted to the Committee? How many complaints had been received, and what were they about? How many of the complaints had been upheld? The Committee needed statistics in order to assess the performance of all the bodies to which the delegation had referred, in the European part of the Netherlands as well as the Antilles and Aruba.

46. Mr. SCHEININ noted that from the delegation's statement earlier in the meeting, that the Netherlands Antilles seemed to consider its participation in an IMF-monitored economic structural adjustment plan as a reason not to fulfil its obligations under article 2 (1) and article 2 (2) of the Covenant. It had used the same excuse for its failure to fulfil its reporting obligations properly. He could see no other interpretation of the statement that it had been impossible to "prioritize various policy issues and other matters and give them the attention they deserve". Surely that was not a valid argument. He did not expect an answer at the current meeting, necessarily, but hoped to receive a prompt answer in writing.

47. Mr. YALDEN said that the Committee did not need details of constitutions, government policy or legislation: it needed information about the results which had been achieved. The delegation had answered question 18 of the list of issues by giving details of the Police Conduct Complaints Committee (KPC), the number of complaints received, etc. But the delegation had also stated that the Minister of Justice was not obliged to follow the KPC's recommendations. So what action had actually been taken?

48. The supervisory board which considered complaints lodged by prison inmates (question 20 of the list of issues) at least appeared to have the power to overturn an unjustified punishment imposed by a prison governor. However, the delegation had not indicated how many complaints the supervisory board had received, what decisions had been taken and whether inmates whose complaints were upheld were entitled to a reduction in their sentence or to some other form of compensation.

49. Mr. ANDO, referring to paragraph 332 of the report, noted that the Act of the Netherlands Antilles of 22 June 1933 prohibited holding or taking part in an open-air public meeting for the purpose of public debate, unless permission was granted by the local police chief. The Act was undoubtedly a legacy of the colonial past. He wondered whether any problems of implementation had been experienced with regard to the exercise of freedom of association and expression. Secondly, according to paragraph 373 of the report, under the law of the Netherlands Antilles a married man could not in law acknowledge an illegitimate child.

whereas according to paragraph 421, the distinction between married and unmarried persons had been removed through amendments to the National Ordinances on health and accident insurance. Did the removal of the distinction also apply to benefits for illegitimate children?

50. Mr. KLEIN welcomed the general trend towards improvement of prison conditions in the Netherlands Antilles. It appeared, however, that serious problems remained, resulting in mass escapes and overcrowding inside prisons. Those problems were undoubtedly exacerbated by the financial problems of the territory. He wondered when they could be expected to disappear. The delegation had referred to its acceptance of responsibility for the situation under the 1998 cooperation agreement, but that might not be enough to provide a remedy. He reminded the delegation that, notwithstanding the internal constitutional relationship between the European part of the Kingdom and the other parts, the Kingdom remained accountable for fulfilling all the obligations under the Covenant, both in its European part and in its overseas territories.

51. Mr. AMOR, referring to article 50 of the Covenant, emphasized that every State party, if a federal State, had a duty to ensure observance of all the Covenant rights throughout its territory. The same applied to unitary States such as the Kingdom of the Netherlands with its three constituent parts. He noted that the Charter of the Kingdom was a legal document sui generis, but the system of internal law was the same throughout the three territories. While noting with satisfaction the human rights situation in the European part of the Kingdom, he was puzzled that the situation in the Netherlands Antilles appeared to be so different, presenting problems such as the death penalty, the practice of torture and prison overcrowding. Moreover, despite some exchange of financial support among the three territories, the financial situation in the Antilles was also very different, to the extent that its representatives had been unable, for lack of funds, to attend the Committee's session. Those differences appeared to result in a differing application of the Covenant's provisions in the Antilles, and he would be glad if the delegation would explain why that was so.

52. The CHAIRPERSON invited the delegation to supply its answers to the Committee's questions in writing. In the meantime, he invited the members of the delegation to respond orally to questions 26 and 27 of the list of issues.

53. Mr. RAMAER (Netherlands) said that question 26 had already been answered in the course of his introductory remarks. On question 27, the system of police training offered an example of how public officials were trained and educated in the Covenant and the Optional Protocol procedure. The prohibition of torture was incorporated in the training modules for police officers, on the basis of paragraph B.3 of the Declaration on the Police adopted by the Parliamentary Assembly of the Council of Europe, according to which police officers must receive, as part of their general, professional or in-service training, appropriate instruction in social problems, democratic freedoms and human rights, including the provisions of the European Convention on Human Rights. Police training in the Netherlands included the concept of a just society, the role of the police in such a society, and the development of international human rights instruments and their application to the Netherlands. The relationship between torture and the legal concept of ill-treatment, as defined in the Criminal Code, was also covered. According to section 8 of the 1993 Police Act, police officers could use force in certain circumstances, but the use of force was strictly regulated in official instructions to the police, the military, the constabulary and the special investigation units. The unlawful use of force was a

criminal offence, and its consequences were also covered in police training. Physical or mental abuse by a police officer for the purpose of obtaining information or a confession, as a means of intimidation or punishment or to compel a person to do or not to do something was categorized as torture and dealt with as such. Police officers were made aware of how the Convention against Torture was implemented in the Netherlands.

54. Mr. LALLAH asked whether the measures taken to train police officers in the Netherlands were also carried out in the two other parts of the Kingdom. As for the answers provided on the question of torture, what steps were taken to make police officers aware of the differences between torture and ill-treatment? What kind of conduct was regarded as permissible in the field of law and order, within the bounds of the Covenant?

55. Mr. HENKIN asked whether the Netherlands had a policy of exercising its responsibilities and rights, under article 41 of the Covenant in particular, by bringing a complaint against another State party for a violation of the Covenant? The Netherlands had attended a recent meeting in Geneva for States parties, dealing with the question of the responsibility of each State party to a treaty to ensure its observance by the others. What was the policy of the Netherlands Government in that regard?

56. The CHAIRPERSON, concluding the dialogue between the Committee and the delegation, expressed his satisfaction with the presentation of the third periodic report of the Netherlands. The delegation had fully answered the Committee's questions concerning the European part of the Kingdom. He regretted the five-year delay in submission of the report by a developed country which should be a role model for others. However, he was satisfied that the Committee had been given a full picture of the human rights situation in the Netherlands. It could be credited with some remarkable achievements over the past few years, including the establishment of the institution of the Ombudsman, with jurisdiction to enquire into maladministration by the executive and complaints against the police. Figures had been given for the complaints dealt with by the Ombudsman, but there had not been any information about follow-up action by the Government in the instances, comprising almost 50 per cent of the complaints against the police, in which there had been a finding of improper conduct.

57. The practice of medical research on human subjects was fraught with the possibility of abuse. When such research was permitted, the risk to the subject was supposed to be proportionate to the potential value of the research. However, that criterion was highly subjective, and the possibility of zeal for research exceeding the risk to the subject could not be entirely ruled out. The activity must therefore be strictly monitored. The Committee had also found that the period of three days plus 15 hours for which a suspect could be detained in police custody before being brought before a magistrate or other judicial authority was a violation of article 9 (3) of the Covenant. The Committee had been told that a person in detention had access to a lawyer, but it remained unclear whether that applied from the time of arrest or at a later point. He was also disturbed to learn that evidence in court proceedings could be taken from anonymous witnesses. A defendant in criminal proceedings must always know the identity of witnesses for the prosecution, otherwise the trial could not be deemed fair, and he hoped that the Government of the Netherlands would take that into account. On the question of euthanasia, which was a very serious matter, certain safeguards were provided by law, although it was not clear whether the new law had come into force on 1 January 2001. Nor was it clear whether the

review committee established for the second phase, 1998-2000, was a legal institution able to determine whether euthanasia was permissible. Those points required clarification. He noted with concern that in the course of a single year, 177 cases of euthanasia had been reported by doctors to the review committee.

58. A number of other concerns had been expressed by members of the Committee. More information was needed about the implementation of legislation, rather than just the actual legislative texts. Concern had been expressed about the rate of unemployment among minorities in the Netherlands, and he welcomed the attempts to address that issue and to increase job opportunities for Turks and Moroccans. As for the Netherlands Antilles and Aruba, he emphasized the obligation of the Government of the Netherlands to account for the human rights situation there. It should have been ready to provide answers to the questions arising from the report concerning those territories, by having arranged for representation from them.

59. Mr. RAMAER (Netherlands) welcomed the constructive comments heard by his delegation, and undertook to provide answers to the additional questions posed by the Committee.

60. Mr. Kretzmer took the Chair.

GENERAL COMMENTS OF THE COMMITTEE (agenda item 6) (continued)
(CCPR/C/72/Rev.7)

Draft general comment on article 4 of the Covenant (continued)

61. Mr. SCHEININ summarized the state of the Committee's work on paragraph 14. A consensus had been reached on the wording of the first and last sentences. With regard to the second sentence, he believed that a reference to derogation in respect of article 2, paragraph 3, of the Covenant could be avoided. Another question was whether article 2, paragraph 3, was a special case, or whether general reference should be made to the parts of the Covenant preceding Part III, or to article 2 and article 3 as a whole. In an earlier draft, the scope of any derogation had excluded everything outside Part III. However, it seemed preferable to avoid a formalistic approach and proceed on the basis that certain provisions were inherent in the Covenant as a whole and not subject to derogation. He also preferred not to refer to articles 2 and 3 in paragraph 14, partly because discrimination was being dealt with separately, in a paragraph referring to article 3 and article 2, paragraph 1. Article 2, paragraph 2, was a general provision on the obligation to implement various provisions of the Covenant, and he felt that article 4 did affect the implementation of article 2, paragraph 2. He had therefore decided to restrict the scope of paragraph 14 of the draft to article 2, paragraph 3 and the procedural questions arising from it. The second sentence would therefore read: "While this clause is not mentioned in the list of non-derogable provisions in article 4, paragraph 2, it constitutes a treaty obligation inherent in the Covenant as a whole". The third sentence would be slightly reworded, as suggested by Mr. Yalden: "Even if during a state of emergency States may introduce, to the extent that such measures are strictly required by the exigencies of the situation, adjustments to the practical functioning of their systems of judicial and other remedies, they must comply with the fundamental obligation under article 2, paragraph 3, to provide for a remedy that is effective."

62. Mr. SHEARER supported that proposal.

63. Paragraph 14, as amended, was adopted.

Paragraph 15

64. The CHAIRPERSON asked Mr. Scheinin to explain the significance of the use of italics and bold type in paragraph 15.

65. Mr. SCHEININ said that the bold text indicated changes made to the draft since the first reading. The section in italics was based on a submission by Amnesty International which had been favourably received by the Committee. It should be dealt with separately, and the rest of paragraph 15 could be adopted without reference to it. Paragraph 15 moved from the general issue of effective remedies to the question of whether there were situations which required judicial remedies during a state of emergency, irrespective of the fact that articles 9 and 14 were not mentioned as non-derogable provisions in article 4.2. Paragraph 15 was at the heart of the general comment, since it arose from the exchange of views with the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the idea of developing a third optional protocol to make parts of articles 9 and 14 non-derogable rights. The approach taken in the draft was not to refer explicitly to articles 9 and 14 in the text, but to mention them in the footnote, which also referred to the position previously adopted by the Committee that there were non-derogable elements in the provisions of those articles.

66. Ms. CHANET, referring to the second sentence, said that it should be made clear that it was article 6 in its entirety, and not just its provisions relating to procedural guarantees, that was non-derogable pursuant to article 4.2. For instance, the prohibition of the use of the death penalty on pregnant women and minors under the age of 18 was not a procedural guarantee. She proposed the wording: "far-reaching and non-derogable guarantees, including procedural guarantees, in relation to any imposition of the death penalty". In the draft submitted as part of the Committee's recommendation to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, she had welcomed the formula: "fundamental principles inherent to the Covenant as a whole". She proposed inserting that phrase in the fourth sentence of paragraph 15.

67. Sir Nigel RODLEY, referring to procedural and other guarantees, said that there should be a specific reference to article 6, not because of the guarantees specifically mentioned in that article, but because it required the death penalty to be in conformity with other provisions of the Covenant.

68. Mr. KLEIN said that there should be a strong link between rights and the procedural means to defend those rights. He suggested that the end of the first sentence should be amended to read: "subject to effective remedies, preferably judicial remedies".

69. Mr. ANDO suggested that the third sentence should be simplified, without changing its original intention, to read: "More generally, procedural rights linked to the enjoyment of or alleged violation of non-derogable human rights are not subject to derogation".

70. Ms. MEDINA QUIROGA said that she failed to understand why article 6 was being referred to in paragraph 15. The second sentence could be interpreted in either of the following ways: firstly, that article 6 was non-derogable in its entirety and contained procedural guarantees that were non-derogable too, which made little sense; and secondly, that article 6 was an example of how procedural guarantees were inseparable from the substance, namely the right to life in the case of that article. There was clearly a need for clarification of that sentence.

71. The CHAIRPERSON suggested that two separate issues were being confused in paragraph 15, namely a remedy in the case of a violation of a right, and the procedure which States were required to follow in order to avoid violating a right. Article 6, for instance, was not referring to a remedy, but to the conditions that needed to exist before action could be taken.

72. Mr. SCHEININ said that his intention had been to use article 6 as an example to show that the procedural guarantees for non-derogable rights were also non-derogable. However, he acknowledged that there could be some confusion resulting from the use of that example, and proposed that the second sentence should be deleted, with a subsequent rewording of the third.

73. The CHAIRPERSON suggested that there should be two separate paragraphs dealing with remedies on one hand, and the procedural guarantees connected with denial of a right on the other.

74. Mr. SCHEININ said that he had no objection to the Chairperson's suggestion in principle, but that he would need more time to devise a suitable formula.

75. The CHAIRPERSON said that Mr. Scheinin should be given more time to complete the redrafting of the relevant parts of paragraph 15. He invited the Committee to continue its discussion of the rest of the paragraph.

76. Ms. MEDINA QUIROGA agreed that a clear distinction should be drawn between procedural guarantees and remedies. She drew attention to the Spanish version in which the term "recurso" could not be used as broadly as the English term "remedy", since it could only be applied to appeals. Certainly, it would help to separate effective remedies and procedural guarantees, because procedural rights relating to the enjoyment of human rights were also non-derogable. In her view, human rights violations arising in the context of a derogation should also be subject to control. However, that did not seem to be covered by the current draft wording. Non-derogable procedural guarantees in relation to the protection of human rights should always remain in force in order to protect individuals in situations where certain rights were themselves derogable in a state of emergency. It was essential to ensure that respect for the rule of law was maintained even in a state of emergency. Therefore, measures taken pursuant to derogations also needed to be controlled.

77. Ms. CHANET said that the reference to article 6 should be deleted from paragraph 15. It was not even a good example, since article 6 was non-derogable, and therefore the procedural guarantees contained therein were not relevant to the discussion. There should be two separate paragraphs, one dealing with remedies, the other with procedural guarantees. With regard to remedies, she agreed with the first sentence, but the second should be deleted. The third sentence should be amended to reduce its complexity, since it simply meant that all procedural

rights were covered by the non-derogable character of a right. It should also distinguish between procedural guarantees in relation to non-derogable rights and those in relation to derogable rights. The mere fact that a right was derogable did not mean that articles 9 and 14 could not be invoked.

78. Sir Nigel RODLEY said that he failed to understand the point made by Ms. Medina Quiroga. He agreed that it was very important that even if derogation was permitted, the measure taken pursuant to that derogation was not automatic, but that had already been stated in paragraph 4, which applied to the general comment as a whole. While he could accept the idea of a separate paragraph concerning article 6, it was essential that the reference to article 6 should not be lost altogether. For example, article 14.5 stipulated that "everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". It could not be argued that that paragraph was non-derogable under any circumstances. Therefore, if it was suspended, it would be difficult to challenge a non-appealable prison sentence. Article 6.2 stipulated that the death penalty could be imposed only for the most serious crimes, and not contrary to the provisions of the Covenant. It could be argued that it would not be contrary to the provisions of the Covenant if an individual was sentenced to death without right of appeal because of suspension of article 14.5. In his view, that was not a valid interpretation, and the Committee should make that clear. When it was stated in article 6 that the death penalty should be "not contrary to the provisions of the present Covenant", that meant the provisions of the Covenant in their full force, without reference to any suspension of any particular provision. It was very important that that should be reflected somewhere in the general comment.

79. Mr. LALLAH wondered whether the words "subject to effective remedies" in the first sentence could be replaced by "guaranteed by effective remedies". Secondly, although he appreciated the point made by Sir Nigel Rodley, case law demonstrated that in many of the trials in which procedural guarantees had not been respected, violations of article 6 had been found. Article 6 was simply the best example of a right being non-derogable in its entirety. While it was true that procedural rights were different from remedies in many ways, there was a point where they coincided. Rights could be protected either by remedies or by particular ways of applying those remedies. Although he had no objection to restricting the first sentence to "effective remedies", it was essential, in his view, to include the notion that procedural rights constituted part of the protection of non-derogable rights.

80. The CHAIRPERSON acknowledged that the Committee had always maintained that, in death penalty cases, a violation of the substantive provisions of article 14 constituted a violation of article 6. Sir Nigel Rodley had in fact made a further point, namely that in the event of a state of emergency in which there had been a derogation from article 14.5, there was a need to prevent that derogation being used to justify violations of article 6. In his view, it was appropriate in a general comment to make it clear to States in advance that such a justification would not be acceptable. That could be done by way of a separate paragraph.

81. Ms. MEDINA QUIROGA supported the Chairperson's suggestion. In response to Sir Nigel Rodley, she understood that the problem of measures taken in a state of emergency was

partially covered in another paragraph, but what was being referred to in paragraph 15 was the suspension of a remedy. There was a need to be specific regarding each right that was suspended.

82. Mr. AMOR agreed with the Chairperson that there should be a distinction between remedies and procedural rights. Even though a reference to article 6 would add substance to the paragraph, it would considerably complicate the drafting process. He proposed that the words "that they must be subject to effective remedies" should be replaced by "that they must protect the right to effective remedies", and similarly, with regard to procedural rights, reference could be made to "protection of the right to procedural guarantees".

83. The CHAIRPERSON said that, in his view, the statement in italics was too broad, since international humanitarian law during armed conflict represented a very different situation. The rules of fair trial could not always apply, for instance in the case of prisoners of war, whose rights were clearly denied under article 9. The Committee needed to exercise great care in determining the scope of such a statement.

84. Mr. SCHEININ, summarizing his observations on paragraph 15, said that while paragraph 14 contained a general comment on remedies, paragraph 15 could be developed to refer to procedural guarantees in relation to non-derogable rights. Paragraph 16 would address the issue of procedural guarantees in relation to rights that were subject to derogation. The reference to article 6 would be deleted from its current position but developed in line with Sir Nigel Rodley's proposal at a later stage.

The meeting rose at 6 p.m.